Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte BERNHARD GOTZ

Appeal No. 2003-2134
Application No. 09/421,675

ON BRIEF

Before FRANKFORT, McQUADE, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 3, 5, 7 to 11 and 19, which are all of the claims pending in this application.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to a fork lift truck. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

Claims 1 to 3, 5, 7 to 11 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,067,393[1] to Szarkowski.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 21, mailed May 15, 2003) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 20, filed September 16, 2002) and reply brief (Paper No. 22, filed July 17, 2003) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied patent to Szarkowski, and to the respective positions articulated by the appellant and the examiner. The appellant argues in the brief (pp. 10-14) that specific limitations of claims 1, 5 , 7 to 9 and 19 are not met by Szarkowski. We agree only with respect to claim 9. Accordingly, we will not

[1] Issued January 10, 1978.

sustain the rejection of claim 9. We sustain the rejection of claims 1 to 3, 5, 7, 8, 10, 11 and 19 for the reasons which follow.[2]

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Claims 1, 5 , 7 to 9 and 19 read as follows:

1. A fork lift truck, comprising:
a lifting frame;
a rear weight;
a driver's cab, wherein the driver's cab forms a load-bearing component of the fork lift truck;

[2] The appellant has grouped claims 1 to 3, 10 and 11 to stand or fall together (brief, p. 5).

at least two bearings for the lifting frame at a distance from each other, by which the lifting frame is connected with the driver's cab in a force-transmitting connection; and

at least one bearing for the rear weight, by means of which the rear weight is connected in a force-transmitting connection with the driver's cab,

wherein the bearing for the rear weight is configured to transmit forces and moments, and

wherein the rear weight is rigidly connected with the driver's cab.

5. The fork lift truck as claimed in claim 1, wherein the bearing for the rear weight is located on an upper segment of the rear weight.

7. The fork lift truck as claimed in claim 1, including a lower bearing for the lifting frame, wherein the driver's cab has at least one strut that extends between the lower bearing for the lifting frame and the bearing for the rear weight.

8. The fork lift truck as claimed in claim 1, wherein the driver's cab has a framework construction, by means of which forces are transmitted between a top bearing for the lifting frame and the bearing for the rear weight.

9. The fork lift truck as claimed in claim 8, wherein the framework construction forms a triangle, wherein a first corner of the triangle is located at an upper portion of the driver's cab and a second and third corner of the triangle are located in the vicinity of the bearing for the rear weight.

19. The fork lift truck as claimed in claim 7, wherein the driver's cab has a framework construction, by means of which forces are transmitted between a top bearing for the lifting frame and the bearing for the rear weight.

Szarkowski discloses a sod handling machine similar to a fork lift truck which permits the handling of pallets of sod without loss of sod from the pallet, and further includes flotation tires arranged to permit the machine to be used for packing the sod after it has been laid. Figure 1 of Szarkowski shows a lift truck device 10 having a main frame 11 that is only shown schematically. The frame includes fore and aft extending

side members 12, which extend along the sides of the machine and also mount an axle and differential 13 at the front of the machine. The rearward portions of the side members 12 are joined together with an overhead bridge construction 14 which has counterweights thereon. The overhead bridge construction 14 overlies a wheel 15 that mounts a wide flotation tire. The wheel 15 is mounted on a pivot support assembly 16 and pivots underneath the bridge 14 as it is steered. The forward axle 13 is used for mounting a pair of hubs that in turn drive wheels 20 which have wide flotation tires thereon.

As shown in Figures 3 and 4 of Szarkowski , the side frame members 12 each have a pair of spaced ears 12A that extend forwardly of the axle 13 and the ears 12A of each pair are spaced apart and are used for pivotally mounting a mast assembly 25 that is used for mounting a fork 26 comprising two prongs that are spaced apart in a usual manner. The mast assembly 25 comprises a pair of upright rails 27 which are connected by a lower cross frame member 28. The upright rails 27 are each fitted between a pair of ears 12A and are pivotally mounted to the respective ears with a pin 30 to permit pivoting of the mast assembly about a transverse horizontal axis from a position wherein the forks 26 are substantially parallel to the ground, or with the outer ends tilted downward slightly, to a position wherein the upper ends of the upright rails 27 are tilted a substantial distance rearwardly and the outer end of the fork extends

upwardly. The fork members 26 are mounted onto a pair of sliding members 32 each of which is slidably mounted on a different one of the upright rails 27. The members 32 may be suitably connected together with one or more cross members, for example 28A adjacent forks 26, and are controlled by a pair of parallel connected hydraulic cylinders 33 that have base ends mounted to the cross member 28 and have extendable and retractable rods with rod ends 33A extending upwardly.

Szarkowski 's lift truck is powered by an engine 35 which is mounted onto the frame 11, and has an output drive shaft for driving through a conventional clutch to a pair of series connected transmissions 36 which drive the differential assembly of the axle 13 in conventional manner. The engine is situated just to the rear of an operator's seat 37 which is adjacent steering wheel 18.

The frame 11 includes a pair of rear upright members 40 which are braced rearwardly with braces 41 attached to the bridge 14, and at the upper end of the upright members 40, a cross member 42 is mounted (see Figure 4). A hydraulic cylinder 43 is attached to the cross member 42 on an ear and with a pin so that it can pivot about a generally horizontal axis. The cylinder 43 extends forwardly and is a double acting cylinder having an extendable, retractable rod 44 that in turn has a

rod end 45 attached to a cross member 46. The cross member 46 in turn is pivotally attached about a horizontal pivot axis between a pair of brackets 47, which in turn are fixed to the upper ends of the upright rails 27. Actuation of the cylinder 43 causes the rod 44 to travel in and out, and will cause the upright rails 27 to tilt fore and aft about pivot pins 30. The upright members 40 can be reinforced as much as necessary for carrying the loads required for tilting the mast assembly.

Claim 1

Claim 1 reads on Szarkowski as follows: A fork lift truck (Szarkowski's lift truck 10 is a fork lift truck specially designed to handle sod), comprising: a lifting frame (Szarkowski's mast assembly 25 and fork 26); a rear weight (Szarkowski's overhead bridge construction 14 which has counterweights thereon); a driver's cab, wherein the driver's cab forms a load-bearing component of the fork lift truck (Szarkowski's main frame 11 which includes side members 12, ears 12A, upright members 40, cross member 42 and braces 41); at least two bearings for the lifting frame at a distance from each other, by which the lifting frame is connected with the driver's cab in a force-transmitting connection (Szarkowski's pins 30 which mount upright rails 27 of the mast assembly 25 to ears 12A and the cross member 46 which is pivotally attached between a pair of brackets 47 which in turn are fixed to the upper ends of the upright rails 27); and at least one bearing for the rear weight, by means of which the rear weight is

connected in a force-transmitting connection with the driver's cab, wherein the bearing for the rear weight is configured to transmit forces and moments, and wherein the rear weight is rigidly connected with the driver's cab (the rigid connection between Szarkowski's braces 41 and side members 12 with the overhead bridge construction 14 having counterweights thereon; see Figures 1 and 5).

Since claim 1 is readable on Szarkowski as set forth above, the appellant's argument that the limitations of claim 1 are not met by Szarkowski is in error. Therefore, the decision of the examiner to reject claim 1 under 35 U.S.C. § 102(b) is affirmed.

Claims 2, 3, 10 and 11

The appellant has grouped claims 1 to 3, 10 and 11 as standing or falling together (brief, p. 5). Thereby, in accordance with 37 CFR § 1.192(c)(7), claims 2, 3, 10 and 11 fall with claim 1. Thus, it follows that the decision of the examiner to reject claims 2, 3, 10 and 11 under 35 U.S.C. § 102(b) is also affirmed.

Claim 5

Claim 5 reads on Szarkowski as follows: The fork lift truck as claimed in claim 1, wherein the bearing for the rear weight is located on an upper segment of the rear

weight (as shown in Figure 5 of Szarkowski, the upper bearings attaching the overhead bridge construction 14 to the braces 41 are on the upper segment of the overhead bridge construction 14 while the lower bearings attaching the overhead bridge construction 14 to the side members 12 are on the lower segment of the overhead bridge construction 14).

Since claim 5 is readable on Szarkowski as set forth above, the appellant's argument that the limitations of claim 5 are not met by Szarkowski is in error. Therefore, the decision of the examiner to reject claim 5 under 35 U.S.C. § 102(b) is affirmed.

Claim 7

Claim 7 reads on Szarkowski as follows: The fork lift truck as claimed in claim 1, including a lower bearing for the lifting frame (Szarkowski's pins 30), wherein the driver's cab has at least one strut that extends between the lower bearing for the lifting frame and the bearing for the rear weight (as shown in Figure 1 of Szarkowski, the side members 12 extends between the lower bearing for the lifting frame (Szarkowski's pins 30) and the bearing for the rear weight (the attachment between the overhead bridge construction 14 and the side members 12)).

Since claim 7 is readable on Szarkowski as set forth above, the appellant's argument that the limitations of claim 7 are not met by Szarkowski is in error. Therefore, the decision of the examiner to reject claim 7 under 35 U.S.C. § 102(b) is affirmed.

Claims 8 and 19

The limitations of claims 8 and 19 are readable on Szarkowski as follows: the driver's cab has a framework construction, by means of which forces are transmitted between a top bearing for the lifting frame and the bearing for the rear weight (Szarkowski's main frame 11 has a framework construction, by means of which forces are transmitted between a top bearing for the lifting frame (i.e., the cross member 46 which is pivotally attached between a pair of brackets 47 which in turn are fixed to the upper ends of the upright rails 27) and the bearing for the rear weight (i.e., the rigid connection between Szarkowski's braces 41 and side members 12 with the overhead bridge construction 14 having counterweights thereon; see Figures 1 and 5)).

Since claims 8 and 19 are readable on Szarkowski as set forth above, the appellant's argument that the limitations of claims 8 and 19 are not met by Szarkowski is in error. Therefore, the decision of the examiner to reject claims 8 and 19 under 35 U.S.C. § 102(b) is affirmed.

Claim 9

Claim 9 is not readable on Szarkowski. First, the framework construction of Szarkowski does not form a triangle. As shown in Figure 1, the framework construction of Szarkowski (brace 41, upright member 40 and the rear part of side member 12) does not form a triangle since brace 41 does not extend to the rear part of side member 12. Second, the corner formed by upright member 40 and the rear part of side member 12 is not located in the vicinity of the bearing for the rear weight (i.e., very near the overhead bridge construction 14).

Since claim 9 does not read on Szarkowski, the decision of the examiner to reject claim 9 under 35 U.S.C. § 102(b) is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 3, 5, 7 to 11 and 19 under 35 U.S.C. § 102(b) is affirmed and the decision of the examiner to reject claim 9 under 35 U.S.C. § 102(b) is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

CHARLES E. FRANKFORT Administrative Patent Judge	)
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